

October 10, 2017

Ms. Linda Alexander
CLSI
439 East Main Street
Westminster, Maryland 21157-5539

Re: Timonium Heights 5-Lot Subdivision
Forest Conservation Variance Request
Tracking #03-17-2565

Dear Ms. Alexander:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department of Environmental Protection and Sustainability (EPS) on September 12, 2017. The request proposes to remove two native specimen trees for the creation of a 5-lot residential development, including its stormwater management structures and construction of driveways. It should be noted that three new dwellings will be constructed and two existing homes will be razed and rebuilt on approximately twenty one existing lots of record associated with the Timonium Heights subdivision plat of April 1921. Both specimen trees are native black walnut (*Juglans nigra*) trees and both are located along the edge of the lone forest stand onsite. The forest stand scored a poor on the forest structure analysis data sheets and one of the two specimen trees is also in poor condition. The other specimen tree is in good condition.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six criteria listed in Subsection 33-6-116 (d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The two existing dwellings could be rebuilt and at least one new dwelling could be constructed on this property without impacting the specimen trees or their critical root zones, yielding a benefit for the owner. Therefore, we find that full application of the law would not deprive the petitioner of all beneficial use of the property; thus, this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. A review of GIS aerials for the Timonium Heights subdivision reveals that the partially wooded locale is not the norm in this suburban neighborhood. So, rather than the general conditions in the neighborhood, the petitioner's plight is due largely to the fact that this portion of Timonium Heights subdivision has not been developed in the 96 years since it was platted. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The granting of this special variance to facilitate the proposed development will be in keeping with the DR zoning and existing residential character of the Timonium Heights neighborhood. Consequently, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. This project will retain forest offsite at a 2:1 reforestation ratio and provide for current ESD stormwater management onsite. Therefore, we find that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The request is based on the fact that intermediate successional forest and a few specimen trees have become established on this portion of Timonium Heights. Furthermore, the owner has not taken any actions prior to filing this request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Proposing to clear specimen trees and second growth forest in a community that pre-dates the law for which the variance is sought would be consistent with the spirit and intent of the Forest Conservation Law. This is especially true given that the project is meeting its stormwater requirements and providing for full reforestation at a pre-approved offsite bank. Therefore, we find that this criterion has been met by the development proposal.

Based upon our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. Permanent impacts to the specimen tree in good condition shall be mitigated by meeting this project's 0.6-acre reforestation requirement either by retaining forest

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offsite in an EPS-approved forest retention bank **or** by paying a \$13,068.00 fee-in-lieu into Baltimore County's Forest Conservation Fund prior to issuance of any permits for this project. An offsite retention bank letter has been enclosed for your client's use. Should your client opt to pay a fee in lieu, any check shall be made payable to Baltimore County.

2. A final forest conservation plan (FCP) and forest conservation worksheet shall be submitted and approved by EIR prior to grading permit approval for this project.
3. The following notes must appear on the FCP and all subsequent plans for this project:
 - "A variance was granted on October 10, 2017 to Baltimore County's Forest Conservation Law to allow impacts to the specimen trees onsite. Conditions were placed on this variance, including retaining 0.6 acres of forest in a pre-approved offsite retention bank."

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner and contract purchaser (if applicable) sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael S. Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens,
Deputy Director

DVL:msk

Enclosure

c. (no encl) Marian Honeczy, Maryland DNR

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I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Property Owner's Signature Date

Printed Name

Contract Purchaser's Signature Date

Printed Name